Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter of	)	
	)	
Rural Health Care Support	)	WC Docket No. 02-60
Mechanism	)	

COMMENTS OF THE AMERICAN SAMOA TELECOMMUNICATIONS AUTHORITY

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COMMENTS OF THE AMERICAN SAMOA TELECOMMUNICATIONS AUTHORITY

The American Samoa Telecommunications Authority ("ASTCA"), by counsel, hereby comments on a discrete issue facing ASTCA and raised in the above-captioned proceeding. 1/ ASTCA submits that the Commission should modify its rules regarding universal service in a manner to permit health care providers in insular areas such as American Samoa to obtain support for telemedicine connectivity to advanced health care facilities in a different state or territory. As set forth below, the Commission has authority, and should use that authority, to modify its universal service rules to provide support for telemedicine connections between health care providers in insular areas such as American Samoa and advanced health care facilities in a different state or territory.

I. INTRODUCTION AND SUMMARY

ASTCA is a semi-autonomous agency of the American Samoa Government, with separate divisions that provide local service to over 17,000 access lines, as well

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1/ *Rural Health Care Support Mechanism*, Notice of Proposed Rulemaking, WC Docket No. 02-60, FCC 02-122 (rel. Apr. 19, 2002) ("*NPRM*").

as Internet, long distance, and wireless telecommunications services, in the geographically remote islands of the Territory of American Samoa. 2/ Because American Samoa lacks a fully-equipped university hospital, ASTCA operates a high-capacity circuit connecting the Territory's health care providers with the University of Hawaii in Honolulu. The critical nature of this telemedicine service makes it imperative that ASTCA be eligible for the rural health care program established under Section 254(h) of the Act. 3/ Yet, ASTCA's operation is ineligible to receive *any* telemedicine support in light of the program's present configuration.

At its core, the federal rural health care program presently supports only the cost difference between: (i) access to advanced health care facilities in rural areas of a given state, and (ii) the same type of access in urban areas of the state. 4/ However, the program does not support the cost of obtaining connectivity between a health care facility in a remote, insular area, and access to an advanced health care facility in an urban area of a state.

Because the FCC has designated American Samoa's main island of Tutuila as the "urban" area for rural health care purposes, 5/ the present program does not

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2/ *See* American Samoa Government and the American Samoa Telecommunications Authority, Petition for Waivers and Declaratory Rulings to Enable American Samoa to Participate in the Universal Service High Cost Support Program and the National Exchange Carrier Association Pools and Tariffs, *Order,* 14 FCC Rcd 9974 (CCB Accounting Policy Div. 1999).

3/ 47 U.S.C. § 254(h).

4/ *See* 47 C.F.R. §§ 54.605 – 54.609.

5/ *Federal-State Joint Board on Universal Service*, First Report and Order, 12 FCC Rcd 8776, 9137, ¶ 697 (1997) ("*Universal Service First Report and Order*").

permit rural telemedicine support for ASTCA. For this reason, ASTCA is unreasonably burdened by the extraordinary expense of providing a high-capacity data connection from Tutuila to Honolulu.

To remedy this problem, ASTCA urges the Commission to exercise its authority under Section 254(h)(2)(A) to modify its rules in a manner to permit funds to be used to support connectivity from rural health care providers in American Samoa and other insular areas, to advanced healthcare facilities located in a different state or territory.

II. AMERICAN SAMOA URGENTLY NEEDS SUPPORTED TELEMEDICINE

The need for universal service support for telemedicine on American Samoa is absolutely critical. As described below, telemedicine, including telecommunications and Internet-based access to physicians and radiology resources outside American Samoa, would significantly reduce the need for costly off-island referrals, enabling the American Samoa health care system to greatly reduce costs and improve the quality of patient care. Due to the limited medical resources available in American Samoa, off-island medical referrals – *i.e.*, sending patients off of American Samoa (typically as far away as Hawaii) for treatment – are currently an expensive, yet necessary, element of health care practice in the territory. In each fiscal year ("FY") from 1994 to 1998, LBJ Tropical Medical Center in Tutuila ("LBJ") concluded the year with deficits in the millions, due almost exclusively to

cost overruns in the hospital's off-island medical referral program. 6/ Recognizing the facility's dire financial situation and the great benefits available through telemedicine, ASTCA currently provides a 384 kb bandwidth link to LBJ and the American Samoa Department of Health ("ASDH") at no cost to either LBJ or the ASDH. 7/ ASTCA supports these links out of its own ratepayer revenues, with no support from either the American Samoa government or any federal program.

Off-island medical referrals are often absolutely necessary to safeguard patient well-being given the current lack of qualified physicians in the Territory. It is also, however, an extraordinarily expensive undertaking. The high cost of off-island patient referrals, in turn, make it extremely difficult for LBJ to meet other crucial obligations necessary to providing quality health care in American Samoa, and result in critical and frequent shortages in necessary pharmaceutical drugs and supplies, and the absence of board-certified physicians and clinicians. While the value of crucial and often life-saving off-island referrals is immeasurable, any means by which the costs of these services can be reduced or subsidized, while providing the same level of care, must be pursued.

6/ Unaudited financial reports for LBJ indicate a deficit of over $2.5 million for FY 1998, over $1 million for FY 1997, and over $3.3 million for FY 1996. LBJ's spending on off-island medical referral shows costs of over $3.7 million for FY 1994, over $4.2 million for FY 1995, over $3.6 million for FY 1996, over $6 million for FY 1997, and almost $4.5 million for FY 1998. By way of example, LBJ's spending on off-island medical expenditures for FY 1998 was 23% of its overall expenditures.

7/ ASTCA's annual cost of maintaining a 384 kb link runs to approximately $168,000. LBJ currently estimates its other communications charges at $180,000 annually.

Telemedicine and other forms of treatment supported by telecommunications and Internet services can avoid the need for off-island referrals in many cases. Indeed, LBJ's off-island medical referral cost overruns could be significantly reduced by the implementation of a more effective telemedicine and tele-radiology program. Such efforts would include increased utilization of video, data and voice distance transmission systems for clinical consultation. These measures can substantially reduce the cost and need for off-island medical referrals by allowing local physicians to consult much more readily and frequently with physicians at a fully equipped health care facility. 8/ LBJ would also employ the use of broadband, high-speed links to transmit radiological images and computerized tomography images for consultation between LBJ and the St. Francis Medical Center Nephrology Institute in Honolulu to permit current and updated prescribed treatment orders for the 40-50 patients per week who undergo regular dialysis at LBJ for renal diseases. 9/

The ability to improve and upgrade the telecommunications and Internet technology base on American Samoa generally – and telemedicine specifically – is crucial to LBJ meeting its goals for improved and more cost-effective patient care.

8/ LBJ has already installed a CT Scanner Suite that is operational, and plans are underway to install a Digital Compatible Mammography Unit and to upgrade basic x-ray equipment to digital capability. To enhance its clinical diagnostic capability, LBJ is also in the process of implementing three sets of image acquisition systems that will include examination cameras and digital otoscopes, ENT scopes and stethoscopes.

9/ This would include more frequent and better consultation and education sessions on new surgical procedures and protocols for LBJ surgeons.

In many instances this is literally a life-and-death proposition. However, geographic isolation and the lack of adequate local resources, both human and technological, could be adequately mitigated by the availability and use of modern technology. Realizing these goals could very well remain unrealized, though, if the costs for implementing technological advances are beyond American Samoa's resources. The need for universal service support for telemedicine on American Samoa, therefore, is absolutely critical. 10/

III. SECTION 254(h)(2)(A) AUTHORIZES THE FCC TO SUPPORT LINKS BETWEEN INSULAR AREAS AND ADVANCED HEALTH CARE FACILITIES IN OTHER STATES OR TERRITORIES

ASTCA agrees with the Commission's suggestion that rural health care support be calculated by "comparing services based on functionality of the service from the perspective of the end-user." 11/ From the point of view of the end-user in American Samoa, a service that is functionally-equivalent to the telecommunications and Internet accessibility available to end-users in urban areas of the country must include subsidized access to locations outside American Samoa, such as

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10/ As to the standard for defining the "advanced health care facilities" nearest an insular area in need of support, ASTCA submits that no rigid, one-size-fits-all solution would be appropriate. For many needs, providing a link between American Samoa and Hawaii will be sufficient. However, other needs may require more specialized information or consultation, necessitating a link between American Samoa and one or more hospitals in other parts of the nation. Thus, ASTCA believes the FCC should adopt a standard that is flexible enough to accommodate the varying needs that insular areas might experience.

11/ *NPRM*, ¶ 35.

Honolulu, Hawaii. Thus, the mechanism should be modified to provide support for telemedicine links between insular areas and urban areas in other states.

Specifically, in response to the Commission's request for "comment on any alternative means for addressing the special problems of insular areas, consistent with section 254," 12/ ASTCA submits that the Commission should provide support based on the cost difference between (a) what a healthcare provider in an urban area (such as Honolulu) would pay for access at a defined speed to an advanced healthcare facility in the same urban area, and (b) what a healthcare provider in a rural insular area (such as American Samoa) must pay for similar access to the same facility in the urban area. Thus, instead of providing discounts based on an in-state comparison to an urban "benchmark," the Commission should provide support for what insular areas really need: the costly long-distance link between the insular areas and an advanced healthcare facility in more urbanized portions of the United States.

ASTCA thus strongly opposes the proposal to "eliminate support for toll charges . . . ." 13/ Whether or not it is true that "virtually all rural health care providers can now reach an ISP without incurring toll charges," toll charges are still a fact of life – and indeed one of the most substantial costs – faced by rural health care facilities in remote insular areas. 14/ Moreover, American Samoa has been

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12/ *Id.*, ¶ 50.

13/ *Id.*, ¶ 20.

14/ *Id.*

"particularly disadvantaged under the mechanism's current rules" because its current telemedicine link, provided via satellite facilities, is "the only viable means for a rural health care provider to receive" access to telemedicine. 15/ ASTCA recommends changes to the mechanism that would include support for satellite-based telemedicine.

In response to the Commission's question "whether to alter our rules to allow comparison with rates in any city in a state" 16/ rather than just the nearest city, ASTCA submits that, at least with respect to insular areas, the rules should allow support for access not only to any city in the same state or territory, but also to a city in a different state or territory. Similarly, ASTCA would oppose use of any "maximum allowable distance" restriction in the context of insular areas, for which such a restriction makes no sense. 17/

The Commission correctly suggests that it has authority pursuant to Section 254(h)(2)A) of the Act to design an alternative rural healthcare support mechanism specially tailored to the needs of insular areas. 18/ In enacting Section 254(h)(2)(A) of the Act, Congress gave the Commission ample authority to design a system that would permit as many rural health care providers as possible – whether located in states or insular territories – to receive universal service support. This statutory

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15/ *Id.*, ¶ 38.

16/ *Id.*, ¶ 42.

17/ *Id.*, ¶¶ 45-48.

18/ *Id.*, ¶ 50.

language (unlike the narrower language of Section 254(h)(1)(A)) broadly states that the "Commission shall establish competitively neutral rules (A) to enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services for . . . health care providers." 19/

In fact, the Commission has already identified Section 254(h)(2)(A) as the appropriate statutory basis for providing support for forms of telemedicine not falling within the express terms of Section 254(h)(1)(A), the "intrastate rural health care" provision of the Act. 20/ Section 254(h)(2)(A), the general "advanced services" provision, provides more than adequate statutory authority for using universal service mechanisms to support telemedicine links between a rural area in one state and an urban area in another, such as Tutuila and Honolulu. 21/ The advanced services provision empowers the Commission to "enhance, to the extent economically reasonable, access to advanced telecommunications and information services for *all* public and non-profit . . . health care providers." 22/ Under this grant of general power, the Commission may establish a mechanism for providing

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19/ 47 U.S.C. § 254(h)(2)(A).

20/ *Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service,* Sixth Order on Reconsideration in CC Docket No. 97-21 and Fifteenth Order on Reconsideration in CC Docket No. 96-45, 14 FCC Rcd 18756, 18784, ¶ 46 (1999) ("*Rural Health Care Reconsideration Order*"); *NPRM*, ¶ 50.

21/ *Rural Health Care Reconsideration Order,* 14 FCC Rcd at 18783-84, ¶ 44.

22/ 47 U.S.C. § 254(h)(2)(A).

universal service support to rural health care providers that do not fall within the strict terms of the intrastate rural health care provision.

Implementing the Section 254(h)(2)(A) advanced services provision in this manner has already been affirmed by the courts. In its decision in *Texas Office of Public Utility Counsel v. FCC*, 23/ the Fifth Circuit specifically upheld a provision funding certain forms of telemedicine that, while not specifically falling within the mandate of the intrastate rural health care provision, were authorized by the -language in the advanced services provision. 24/ Although it was argued that the intrastate rural health care provision "gives specific instructions on providing subsidized support for health care providers and explicitly limits that support to rural health care providers," rendering the advanced services provision unusable to provide support for telemedicine not falling within the express terms of the intrastate section, the court expressly rejected those arguments. 25/

Rather, the court held that "§ 254(h)(2)(A) demonstrates Congress's intent to authorize expanding support to 'advanced services,' when possible" for the provision of telemedicine not falling under the express terms of the rural health care section,

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23/ 183 F.3d 393 (5th Cir. 1999) ("*Texas OPUC v. FCC*"), *aff'g in part, rev'g in part, and remanding in part*, *Universal Service First Report and Order*, 12 FCC Rcd 8776 (1997) (generally affirming FCC's broad authority to establish high-cost, schools/libraries, and rural health care universal service programs).

24/ While the court reversed some aspects of the universal service program as encroachments upon the authority of state commissions over intrastate service, American Samoa-Hawaii connections are jurisdictionally interstate, and therefore clearly within the FCC's authority. *See Texas OPUC v. FCC*, 183 F.3d at 446-49.

25/ *Texas OPUC v. FCC*, 183 F.3d at 445-46.

and that the advanced services section should be read as instructing the FCC to support such forms of telemedicine wherever it is "economically feasible" to do so. 26/ The Court thus affirmed the FCC's attempts to "'enhance access' as authorized by the plain language of § 254(h)(2)(A)." 27/ Section 254(h)(2)(A)'s provision for advanced services therefore authorizes the FCC to turn to its universal service program to provide support for telemedicine links between American Samoa and the fully equipped hospital at the University of Hawaii in Honolulu.

Thus, the Commission should take advantage of this opportunity to overhaul its rules for universal service for health care providers, and should abandon its current rule limiting the applicable benchmark to urban areas within the state in which the rural health care provider is located. The present rule unfairly eliminates the ability of health care providers located in insular areas that are entirely "rural" to obtain subsidized access to advanced health care facilities elsewhere. The existing rule also is inconsistent with the Commission's recognition that the ability of health care providers, particularly in rural areas, "to communicate electronically is important to the health of local communities, the states, and the nation." 28/

Given Congress' intent to provide rural health care providers "an affordable rate for the services necessary for the purposes of telemedicine and instruction

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26/ *Id*. at 446.

27/ *Id*.

28/ *Universal Service First Report and Order*, 12 FCC Rcd at 9099, ¶ 617 (footnote omitted).

relating to such services," 29/ the vital nature of these health care services in insular areas, the Fifth Circuit's ruling with respect to the Commission's implementation of the statutory provision, and the fact that the rural health care universal service fund is extremely underutilized, 30/ the Commission should promptly modify its rules to permit funds to be applied to connections between health care facilities in rural, insular areas and advanced health care centers located in a different state or territory.

IV. MODIFICATION OF THE RULES IS SUPPORTED BY CONGRESSIONAL INTENT

The legislative history surrounding adoption of the bill adding these provisions to the Act makes clear Congress' intent to ensure that health care providers in *all* the nation's states and territories would afford to utilize and rely on telecommunications networks to provide critical assistance in the provision of medical services. 31/ By ensuring that the telemedicine provisions of the Act benefit the residents of American Samoa, the Commission will do a great deal to advance the public good in the manner contemplated by the statute.

29/ H.R. Conf. Rep. No. 458, 104th Cong. 2nd Sess. 133 (1996) (cited in *NPRM* at ¶6).

30/ *NPRM* at ¶ 10 (as of February 1, 2002, the rural health care program has distributed only $13 million in three years, despite having $400 million available on an *annual* basis).

31/ *See* S. Rep. No. 23, 104th Cong., 1st Sess. 1995 ("This section is intended to ensure that health care providers for rural areas . . . are able to effectively utilize modern telecommunications services in the provision of medical . . . services to all parts of the Nation.") ("Senate Report").

The Senate Report shows that the new provision, Section 310 of the bill:

> requires [that] a telecommunications carrier [eligible for universal service support] shall provide telecommunications services necessary for the provision of health care services to *any* health care provider serving persons in rural areas at rates that are reasonably comparable to rates charged for such services in urban areas. 32/

In other words, Congress intended that a health care provider located in a remote rural or insular area, such as American Samoa, be able to access telemedicine connectivity to locations such as the University of Hawaii Medical Center in Honolulu, at a cost reasonably comparable to that faced by a health care provider in Honolulu. Likewise, the Conference Report states:

> New subsection 254(h) incorporates, with modifications, the provisions of Section 310 of the Senate Bill. New subsection (h) of section 254 is intended to ensure that health care providers for rural areas . . . have affordable access to modern telecommunications services that will enable them to provide medical . . . services to *all parts of the Nation*. 33/

The Conference Report also emphasizes that the ability of "rural health care providers to obtain access to advanced telecommunications services is critical to ensuring that these services area available on a universal basis." 34/

32/ *Id*. (emphasis added).

33/ S. Conf. Rep. No. 230, 104th Cong., 2nd Sess. 1996 (emphasis added) ("Conference Report").

34/ *Id*.

That this benefit was intended to extend to all parts of the Nation – including those, such as American Samoa, that may lack an urban area within their "state" boundaries – is abundantly clear where the legislative history explains:

> New section 254(b) combines the principles found in both the Senate bill and the House amendment, with the addition of 'insular areas (such as the Pacific Island territories) . . . to the list of consumers to whom access to telecommunications and information services should be provided. 35/

The legislative history thus underscores how vitally important it is that "universal access will ensure that *no one* is barred from benefiting from the power of the Information Age." 36/

35/ *Id*.

36/ *Id*. (emphasis added).

V. CONCLUSION

For the foregoing reasons, the Commission should, pursuant to its authority under Section 254(h)(2)(A) of the Act, modify its universal service rules to provide support for telemedicine connections between health care providers in insular areas such as American Samoa and advanced health care facilities in a different state or territory.

Respectfully submitted,

/s/ *David L. Sieradzki*

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